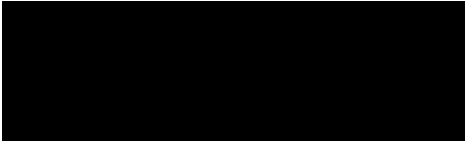




U.S. Citizenship
and Immigration
Services

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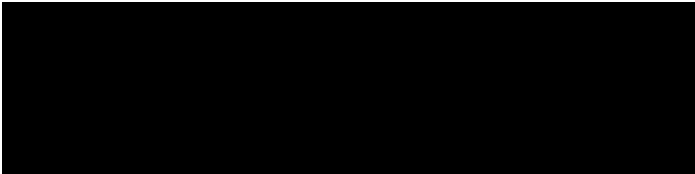
FILE# [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: 11 7 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

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U.S. CITIZENSHIP AND IMMIGRATION SERVICES
DIVISION OF IMMIGRATION

NOV 10 2004

DISCUSSION: The immigrant visa petition was denied by the Director of the Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded for further consideration and action.

The petitioner indicates that it is an interdenominational organization engaged in the training and placement of missionaries and "non government origin religious workers" in Asian countries. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), to employ her as its "Director of International Resources. The director determined that the petitioner had not established that it is a bona fide non-profit religious organization.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101 (a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
- (ii) seeks to enter the United States--
 - (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
 - (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
 - (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Pursuant to 8 C.F.R. § 204.5(m)(1):

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in

the United States) for at least the two-year period immediately preceding the filing of the petition.

The issue raised by the director is whether the petitioner has established that it is a bona fide non-profit religious organization. The director noted that the Internal Revenue Service classified the petitioner as a charitable organization under 170(b)(1)(A)(vi) of the IRC, and not as a religious organization. The director, therefore, determined that the petitioner had not established that it is a bona fide non-profit religious organization.

Pursuant to 8 C.F.R. § 204.5(m)(3), each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or,

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

To satisfy the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption as a religious organization issued by the Internal Revenue Service (IRS) is required. In this case, the petitioner submitted an IRS letter recognizing it as exempt from taxation under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code (IRC). This document alone is not sufficient to establish that the petitioner qualifies as a bona fide non-profit religious organization. There are several classes of non-profit organizations eligible for tax exemption under section 501(c)(3) of the IRC. While the IRS will grant tax-exempt status to organizations operated for religious purposes under section 170(b)(1)(a)(vi), this section includes not only organizations that are operated for religious purposes, but also organizations formed for charitable, scientific, literary, or educational purposes, or to foster amateur sport or to prevent cruelty to children or animals.

In the alternative, to satisfy the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC as it relates to religious organizations.

On appeal, counsel asserts that the petitioning organization is organized for exclusively religious purposes and meets the IRS guidelines for charitable organizations operated solely for religious purposes. Counsel further asserts that, as an organization organized for the purpose of advancement of religion, the petitioning organization is exempt from taxation under 501(c)(3) of the IRC as it relates to religious organizations.

Counsel submits: the petitioner's Articles of Incorporation; the petitioner's IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code; brochures and flyers describing the petitioner's operations; a letter from Irvin Rutherford, the Founder and Executive Director of Asia Ministry Teams, describing the purpose of the organization; and, a letter from the IRS dated July 11, 2001, stating that the petitioner "is a mission society sponsored by or affiliated with one or more churches or church denominations, more than one-half of the activities of which society are conducted in, or directed at persons in, foreign countries." In view of the foregoing, it is concluded that the petitioner has provided sufficient evidence to establish that it is a bona fide non-profit religious organization.

However, the record does not contain sufficient evidence to establish that the petitioner has had the ability to pay the beneficiary the proffered wage. The petitioner states that the applicant will be paid \$40,000 per year. The petitioner has not provided copies of its annual reports, federal income tax returns, or audited financial statements as required at 8 C.F.R. § 204.5(g)(2).

The matter will be remanded to the director to make a determination on this issue. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence, the director will enter a new decision.

In reviewing an immigrant visa petition, CIS must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

ORDER: The matter is remanded for further consideration and action consistent with the foregoing and issuance of a new decision.